THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.14199 OF 2006

DATED 04.09.2006

Between:

B.Ramesh Kumar and
two others. .. PETITIONERS

versus

The Commissioner,
Municipal Corporation of Vijayawada,
Vijayawada, Krishna District,
and two others. .. RESPONDENTS

WRIT PETITION NO.14199 OF 2006

ORDER:

This Court ordered Notice Before Admission on 14.7.2006 and status quo was granted for a limited period and the same had been extended for a further limited period subsequent thereto.

2. The petitioners filed the present Writ Petition for a Writ of Mandamus declaring the action of the 1st respondent in initiating steps to demolish the building bearing door No.40-01-142, situated right opposite Hotel Fortuen Murali Park, M.G. Road, Vijayawada, for Bandar road widening as illegal, arbitrary and in violation of Articles 14, 16 and 300-A of the Constitution of India and consequently direct the respondents not to take any steps to demolish the building without protecting the property by raising necessary pillars and columns and pass such other suitable orders.

3. It is stated that the respondents 2 and 3 are the owners of the premises bearing door No.40-01-142, situated right opposite Hotel Fortuen Murali Park, M.G. Road, Vijayawada. It is also stated that there are three tenements in the first floor. The first petitioner is running the business in one of the shop in the name and style of BROOKS on a monthly rent of Rs.28,989/-, the 2nd petitioner is running the business in the middle portion of the premises in the name and style of SUBHALEKHLU on a monthly rent of Rs.3,850/- and the third petitioner is running the business in the third shop in the name and style of MANTRA on a monthly rent of Rs.30,000/-. It is further stated that the third petitioner had paid huge amounts towards good will of the

shop, which was earlier run by Zodiac show room, which is taken over by the third petitioner. It is stated that the first and second petitioners had paid an amount of Rs.3.6 lakhs and Rs.3.8 lakhs respectively by way of advance and incurred huge expenditure of more than Rs.4..5 lakhs for furniture and for interior work. It is stated that the petitioners have been paying the rents regularly. It is stated that the 1st respondent had undertook road widening at Bandar road for the said purpose and made markings on the property. It is also stated that the 1st respondent had proposed to acquire the schedule property with a width of 3'10" depth for road widening. It is also stated that in the said area of 3'10", there are columns and pillars supporting the upper floor as it is a multi-storied building. If the pillars situated at 3'10" area is removed, the entire building will collapse and result in heavy loss to the petitioners. Hence, the petitioners had made a representation to the Corporation stating No Objection for demolition of the building provided if new pillars are constructed at appropriate place before its demolition. It is also stated that it is given to understand that acting on the representation, the 1st respondent had instructed the respondents 2 and 3 for construction of the pillars after leaving 3'10" area in the front portion. If the pillars are not constructed before its demolition, the entire building will collapse. Hence, necessary steps have to be taken to construct the pillars and to lay the columns before starting the demolition, but, in spite of the direction given by the 1st respondent, no steps were taken to construct the pillars. It is also further stated that respondents 2 and 3 started harassing the petitioners to vacate the premises. Hence, the petitioners filed suit for permanent injunction and also for mandatory injunction for reconstruction of the pillars and columns. It is also stated that pending suit, a Commissioner was appointed to note down the physical features of the property and the Commissioner, after inspection, had submitted his report observing

that the entire building is supported by pillars. The respondents 2 and 3 are intentionally not making any constructions and it is given to understand that they are given consent for road widening in order to see that the entire building is collapsed so that the petitioners are evicted without any hindrance. It is also stated that the relief as sought for in the suit by the petitioners has nothing to do with the reliefs sought for in this Writ Petition. It is stated that the suit OS.No.548 of 2006 on the file of Senior Civil Judge, Vijayawada, is pending and it is not in controversy that the writ petitioners and the respondents 2 and 3 herein are arrayed as plaintiffs and defendants in the said suit and the reliefs prayed for are as hereunder:

a) permanent injunction against the defendants, their men, servants, aides, representatives etc., from ever interfering with the plaintiff's peaceful possession and enjoyment of the schedule property and from evicting them from the schedule property without following the process of law.

b) Mandatory injunction against the defendants/landlords directing them to make construction of new pillars and columns necessary in the schedule tenanted premises to support the schedule building before surrendering the 3'10" depth site to the Corporation wherein the existing pillars and columns supporting the schedule building are placed.

4. Counter affidavits are filed by the 1st respondent and also the 2nd respondent, wherein several details had been specified. It is averred in paragraph 4 of the counter affidavit filed by the 1st respondent that M.G. Road (Bandar Road) is an important major road passing through Vijayawada city, which has developed into a commercially important road. It is stated that due to its commercial potentiality, vehicular traffic in M.G. Road become very high, which leads to traffic jams and also to frequent accidents, and taking into consideration of traffic situations and traffic survey report by the agencies, the V.G.T.M. Urban

Development Authority proposed widening of M.G. Road from 80'-0" to 120'-0" duly proposing the modification of sanction master plan. It is stated that after following due procedure i.e., calling for public objections etc., the modifications were also confirmed by the Government of Andhra Pradesh vide MMP No.2/2001 and GO.Ms.No.193, M.A., dated 1.5.2002. Accordingly the District Collector, Krishna, convened several meetings with the owners of the properties abutting to M.G. Road and all the Departmental Heads in the District regarding M.G. Road widening process. During the said sessions, majority of the building owners had come forward with a proposal to restrict the road widening uniformly to 100'-0" so that they will cooperate with the widening process by allowing the widening without claiming structural and site cost compensation. It is further stated that on examining the said proposal, it was accepted for 100'-0" wide. Accordingly, M.G. Road widening process was taken up. It is also stated that as per the proposed widening of M.G. Road to 100'-0" wide, the building of the 2nd and 3rd respondents is affected 1.20 Mts. on eastern side and 0.70 Mts. on western side and particularly main columns of the building are affected. It is further stated that the owners of the property bearing door No.40-1-142, who are the 2nd and 3rd respondents herein, had given consent to the respondent-Corporation on 19.12.2005 duly accepting to remove the widening affected portion of their building voluntarily, but it is learnt that the 2nd and 3rd respondents, who are the owners of the building, could not able to remove the widening affected portion due to non-cooperation of the petitioners-tenants. It is also stated that the respondent-Corporation also commenced the work of construction of out fall drain and the construction work is held up at the schedule building. It is further stated that the tenants of the ground floor of the building, who are the petitioners herein filed a representation before the respondent-

Corporation duly stating that if the pillars, which are affected under M.G. Road widening are removed, the entire building will be collapsed, which may cause irreparable loss to their business and families and requested to see that the building is protected by raising necessary pillars supporting the building. It is stated that in due regard to the representation given by the petitioners, the respondent-Corporation had issued an endorsement to the building owners i.e., the 2nd and 3rd respondents herein, duly directing to remove the said affected pillars, structures and insert new pillars for supporting the building slab in each floor. It is also further averred in paragraph 5 of the counter affidavit that the 1st respondent-Corporation had taken up construction of out fall drain in the widened place of the road, and the construction work was held up at the site schedule building due to non-removal of pillars and structures affected under 100'-0" wide road which may cause severe obstruction to the free flow of storm water and rain water and leads to public inconvenience. It is also stated that it is not true that at the instance of respondents 2 and 3, the 1st respondent is threatening to demolish the building. It is further stated that the owners of the building i.e., 2nd and 3rd respondents had given consent to the 1st respondent-Corporation voluntarily and are ready to insert new pillars inside their building to protect their building in every floor. It is also stated that the 1st respondent-Corporation acts as per law and in the interest of public, but not at the instance of anybody.

5. In the counter affidavit filed by the 2nd respondent several factual details had been narrated and at paragraph 3 of the counter affidavit, it was specifically stated that they are eager to construct the pillars in order to keep the entire building structure intact and they have to take measures in such a way that the entire building shall not be disturbed. Several other details also had been made and it is stated that the

allegation that they had given consent for road widening in order to see that the entire building is collapsed so that the petitioners are affected is far from truth and the same is made only for purpose of filing the present Writ Petition.

6. Except not making the Commissioner, Municipal Corporation of Vijayawada, in the pending suit a party, virtually the relief prayed for in the present Writ Petition as well as in the pending suit, are one and the same. Be that as it may, however, in the light of the stand taken in the counter affidavit filed by the 2nd respondent, taking over all facts and circumstances into consideration, the petitioners and also respondents 2 and 3 to cooperate with one another in protecting the building by taking necessary steps to see that the pillars are raised and the Commissioner, Municipal Corporation of Vijayawada also to take up the widening process by accommodating the petitioners and the respondents conveniently to raise such pillars so as to protect the building in question after taking necessary measurements and the portion of the property required for the purpose aforesaid. It is now stated by the learned Standing Counsel that the measurements already had been taken and the same is hereby recorded. Accordingly, the owners/respondents 2 and 3 herein are permitted to raise necessary pillars to protect the building. The 1st respondent-Corporation to indicate to the tenants the extent of the property needed for purpose of road widening specifically and also for purpose of construction.

7. With the direction indicated above, the Writ Petition is disposed of. No costs.

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04.09.2006

SSR